

International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators, Local 720, AFL-CIO and California Sports Network, Inc. and National Association of Broadcast Employees and Technicians, Local 531, AFL-CIO.
Case 31-CD-261

17 July 1984

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND DENNIS

The charge in this Section 10(k) proceeding was filed 4 January 1984 by the Employer, alleging that the Respondent, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators, Local 720, AFL-CIO (IATSE), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by National Association of Broadcast Employees and Technicians, Local 531, AFL-CIO (NABET). The hearing was held 7 February 1984 before Hearing Officer Michael J. Chavez.¹

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Company, a California corporation, provides technical equipment, operators, and services used in the production and broadcast of television programs at its facility in Woodland Hills, California. It annually sells and delivers services in excess of \$50,000 directly to buyers located outside the State of California, and has gross annual revenues in excess of \$500,000. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that IATSE and NABET are labor organizations within the meaning of Section 2(5) of the Act.

¹ IATSE failed to appear at the hearing despite being served with a copy of the notice of hearing. IATSE did not request a delay or continuance of the hearing.

II. THE DISPUTE

A. Background and Facts of Dispute

Katz Communications had a contract with Howard Zuckerman and Associates to broadcast the Pacific Coast Athletic Association Games of the Week. The Employer, California Sports Network, provided the technical "below-the-line" personnel for the broadcasts, including camera operators, video operators, slow motion operators, video tape operators, and audio people. The first scheduled broadcast was a University of Las Vegas basketball game 7 January 1984 in Las Vegas, Nevada.

In late November 1983, Scott McLain, IATSE's associate business agent, called Howard Zuckerman, the Employer's president, and claimed the below-the-line work for the Las Vegas broadcasts on the ground that IATSE had jurisdiction for all work done in Las Vegas. Zuckerman advised McLain that the Employer had a collective-bargaining agreement with NABET that covered the work in dispute. Two or three similar conversations occurred after the first one. About 26 November 1983, Fred Botwinik, president of Katz Communications, told Zuckerman that McLain had told him that unless IATSE handled the "pickup" either by some means directly with Katz or through another company in Las Vegas that was a signatory to an agreement with IATSE, IATSE would picket the 7 January broadcast.

The week of the broadcast McLain called Zuckerman and advised him that IATSE intended to picket because IATSE had jurisdiction in Las Vegas and felt that its jurisdiction was being usurped.

On 7 January 100-150 people picketed the facility in which the basketball game was held. The pickets carried signs which read, "Unfair to Local 720."

The disputed work is commonly called "below-the-line" production services which involves supplying to television producers the equipment and technical personnel necessary to the live television broadcast or videotape recording of television programs. The work involves arriving at the center 6 or 8 hours in advance and installing camera cable and audio cable into the building from the mobile unit parked at the top of a tunnel. Employees then bring in all the necessary equipment, hook it up, and operate it during the broadcast. Telephone company lines transmit the audio and video signals from the truck.

The crew includes a technical director who is in charge of the crew and "handles" the on-air switching from camera to camera, and an audio operator or mixer who does with sound "basically the

same thing that the technical director does with video." Audio and video utility people install and handle the video and audio cables when they are moved from place to place. There are also three to six camera operators, video tape operators, a slow-motion operator, video operators who handle the picture quality, and maintenance engineers who keep the equipment running and working properly.

B. Work in Dispute

The disputed work involves the operation of technical broadcasting equipment by employees of California Sports Network, Inc. at University of Las Vegas basketball games in Las Vegas, Nevada.

C. Contentions of the Parties

The Employer and NABET contend that their collective-bargaining agreement covers the disputed work. The contract recognizes NABET as the exclusive bargaining agent for all the Employer's employees who work in the Camera, Production Sound, Sound Re-Recording, and Electrical classifications. They also contend that company preference and past practice, area and industry practice, and relative skills support awarding the disputed work to NABET-represented employees.

IATSE contends that it has jurisdiction over the broadcasting work done in Las Vegas.

D. Applicability of the Statute

In late November 1983 Scott McLain, IATSE's associate business agent, informed Howard Zuckerman, the Employer's president, that IATSE claimed the disputed work. In a conversation with Fred Botwinik, Katz Communications' president, McLain threatened to picket the 7 January basketball game unless IATSE-represented employees performed the work. The week of 7 January McLain advised Zuckerman that IATSE was going to picket the game to enforce its jurisdictional claim. On 7 January 100-150 people picketed at the game, carrying signs reading, "Unfair to Local 720."

Louis Favara, NABET's business manager, testified that there is no agreed-upon method for voluntary resolution of this dispute, and no contrary evidence was presented.

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certification and collective-bargaining agreement

The disputed work is covered by a collective-bargaining agreement between the Employer and NABET. The Employer recognizes NABET as the sole and exclusive bargaining agent for its employees working in the following applicable job classifications: Camera, Production Sound, Sound Re-Recording, and Electrical. Employees in these classifications customarily perform the disputed work. The Employer does not have a collective-bargaining relationship with IATSE Local 720. Therefore, this factor favors a work assignment to NABET-represented employees.

2. Company preference and past practice

The Company assigned the disputed work to NABET-represented employees. According to Zuckerman, the Company uses NABET-represented employees whenever it broadcasts a live sporting event. Accordingly, this factor favors an assignment of the disputed work to NABET-represented employees.

3. Area and industry practice

Favara testified that NABET has traditionally represented "below-the-line" workers employed in the television network owner-operated broadcast industry, and that it represents below-the-line employees in TV and radio stations in Detroit, Cleveland, New York, Chicago, Los Angeles, and San Francisco, and other places.

Favara also testified that when NBC or ABC sends crews from Los Angeles to Nevada to broadcast a live sporting event, they bring their NABET-represented technicians with them from Los Angeles. No evidence was presented that IATSE-represented employees had performed such broadcasting work in the area or industry. This factor therefore favors an award of the disputed work to NABET-represented employees.

4. Relative skills

According to Company President Zuckerman, the disputed work involves engineering and electronic skills that require schooling and experience. NABET-represented employees possess such skills. Zuckerman also testified that stagehands generally do not have engineering or electronic backgrounds, and he testified without contradiction that IATSE is primarily a stagehands' local. Therefore, this factor favors an assignment to NABET-represented employees.

5. Economy and efficiency of operation

There was no evidence presented whether economy and efficiency of operation would be promoted by an award to either NABET-represented employees or IATSE-represented employees. Accordingly, this factor favors neither group of employees.

Conclusions

After considering all the relevant factors, we conclude that employees represented by NABET are entitled to perform the work in dispute. We reach this conclusion relying on the collective-bargaining agreement between the Company and NABET, company preference and past practice, area and industry practice, and relative skills. In

making this determination, we are awarding the work to employees represented by NABET, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of California Sports Network, Inc. represented by National Association of Broadcast Employees and Technicians, Local 531, AFL-CIO, are entitled to operate technical broadcasting equipment at University of Las Vegas basketball games in Las Vegas, Nevada.

2. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators, Local 720, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force California Sports Network, Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators, Local 720, AFL-CIO, shall notify the Regional Director for Region 31 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.